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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97108; File No. SR-CboeBZX-2023-020]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule

March 10, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 6, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX” or “BZX Equities”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("BZX Equities") as follows: 1) adopt a new Step-Up Tier and renumber the remaining tiers; and 2) adopt a new Non-Displayed Step-Up Tier. The Exchange proposes to implement the proposed change to its fee schedule on March 6, 2023.³

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have

³ The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-CboeBZX-2023-017). On March 6, 2023, the Exchange withdrew that filing and submitted this proposal.

similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays credits to Members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁵ For orders in securities priced below \$1.00, the Exchange does not provide a rebate or assess a fee for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity.⁶ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 22, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

⁵ See BZX Equities Fee Schedule, Standard Rates.

⁶ Id.

Step-Up Tiers

Pursuant to footnote 2 of the Fee Schedule, the Exchange currently offers Step Up Tiers (tiers 1 through 3) that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes B,⁷ V,⁸ and Y⁹ where they increase their relative liquidity each month over a predetermined baseline. Specifically, the Tiers are as follows:

- Tier 1 offers an enhanced rebate of \$0.0032 per share for qualifying orders (i.e., orders yielding fee codes B, V, or Y) where 1) MPID has a Step-Up Add TCV¹⁰ from May 2019 $\geq 0.10\%$; and 2) MPID has an ADV¹¹ $\geq 0.50\%$ of the TCV.
- Tier 2 offers an enhanced rebate of \$0.0032 per share for qualifying orders (i.e., orders yielding fee codes B, V, or Y) where 1) Member has a Step-Up ADAV¹² from January 2022 $\geq 10,000,000$ or Members has a Step-Up Add TCV from

⁷ Orders yielding Fee Code “B” are displayed orders adding liquidity to BZX (Tape B).

⁸ Orders yielding Fee Code “V” are displayed orders adding liquidity to BZX (Tape A).

⁹ Orders yielding Fee Code “Y” are displayed orders adding liquidity to BZX (Tape C).

¹⁰ “Step-Up Add TCV” means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis. TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹¹ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

¹² “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

January 2022 $\geq 0.10\%$; and 2) Member has an ADV $\geq 0.30\%$ of the TCV or Members has an ADV $\geq 35,000,000$.

- Tier 3 offers an enhanced rebate of \$0.0032 per share for qualifying orders (i.e., orders yielding fee codes B, V, or Y) where 1) MPID has a Step-Up ADAV from May 2021 $\geq 30,000,000$ or MPID has a Step-Up Add TCV from May 2021 $\geq 0.30\%$; and 2) MPID has an ADV $\geq 0.30\%$ of the TCV or MPID has an ADV $\geq 35,000,000$.

The Exchange now proposes to add a new Tier 1 and renumber existing Tiers 1 through 3. Specifically, proposed Tier 1 would provide for the following:

- Proposed Tier 1 would offer an enhanced rebate of \$0.0031 per share for qualifying orders (i.e., orders yielding fee codes B, V, or Y) where 1) Member has a Step-Up ADAV from January 2023 $\geq 10,000,000$ or Member has a Step-Up Add TCV from January 2023 $\geq 0.10\%$; and 2) Member has an ADV $\geq 0.60\%$ of the TCV.

Proposed Tiers 2 through 4 would have the same criteria and provide the same enhanced rebate as existing Tiers 1 through 3, respectively. The only proposed change is to modify the Tier numbers of Tier 1 through 3 to Tier 2 through 4, respectively.

Non-Displayed Step-Up Tier

In addition to the adoption of a new Step-Up Tier 1, the Exchange now proposes to amend footnote 2 to add a Non-Displayed Step-Up Tier, which will provide Members an opportunity to receive an enhanced rebate from the standard rebate¹³ for liquidity

¹³ Currently, the Exchange provides a standard rebate of \$0.00100 per share for liquidity adding non-displayed orders that yield fee codes HB, HV, or HY.

adding non-displayed orders that yield fee codes HB,¹⁴ HV,¹⁵ and HY¹⁶ and meet certain required volume-based criteria. The proposed criteria for the Non-Displayed Step-Up Tier is as follows:

- The proposed Non-Displayed Step-Up Tier would offer an enhanced rebate of \$0.0025 per share for qualifying orders (i.e., orders yielding fee codes HB, HV, or HY) where 1) Member has a Step-Up ADAV from January 2023 $\geq 10,000,000$ or Member has a Step-Up Add TCV from January 2023 $\geq 0.10\%$; and 2) Member has an ADV $\geq 0.60\%$ of the TCV.

The Exchange notes that the Step-Up Tiers in general are designed to provide Members with additional opportunities to receive enhanced rebates by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Like other Step-Up Tiers, the proposed Step-Up Tier 1 is designed to give members an additional opportunity to receive an enhanced rebate for orders meeting the applicable criteria. Furthermore, the proposed Non-Displayed Step-Up Tier is designed to increase the Members' provision of liquidity to the Exchange, which increases execution opportunities and provides for overall enhanced price discovery and price improvement opportunities on the Exchange. Increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

¹⁴ Orders yielding Fee Code "HB" are non-displayed orders adding liquidity to BZX (Tape B).

¹⁵ Orders yielding Fee Code "HV" are non-displayed orders adding liquidity to BZX (Tape A).

¹⁶ Orders yielding Fee Code "HY" are non-displayed orders adding liquidity to BZX (Tape C).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)²⁰ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to introduce a new Step-Up Tier 1 and a new Non-

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ Id.

²⁰ 15 U.S.C. 78f(b)(4)

Displayed Step-Up Tier reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. The Exchange believes the proposed Step-Up Tier 1 and Non-Displayed Step-Up Tier are reasonable as they serve to incentivize Members to increase their liquidity-adding, displayed volume (Step-Up Tier 1) and liquidity-adding, non-displayed volume (Non-Displayed Step-Up Tier), which benefit all market participants by incentivizing continuous liquidity and thus, deeper, more liquid markets as well as increased execution opportunities.

Particularly, the proposed incentives to provide displayed liquidity are designed to incentivize continuous displayed liquidity, which signals other market participants to take the additional execution opportunities provided by such liquidity, while the proposed incentives to provide non-displayed liquidity will further contribute to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency, and improves market quality for all investors.

In particular, the Exchange believes the proposed Step-Up Tier 1 and Non-Displayed Step-Up Tier represent an equitable allocation of rebates and are not unfairly discriminatory because all Members are eligible for those tiers and would have the opportunity to meet a tier's criteria and would receive the proposed rebate if such criteria is met. Further, the proposed rebates are commensurate with the proposed criteria. That is, the rebates reasonably reflect the difficulty in achieving the applicable criteria as proposed. Without having a view of activity on other markets and off-exchange venues,

the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tier. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under Step-Up Tier 1 and Non-Displayed Step-Up Tier 1. The Exchange also notes that proposed tier/rebate will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under the modified tier, the Member will merely not receive that corresponding enhanced rebate.

Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,²¹ including the Exchange,²² and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

²¹ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²² See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²³

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed tier changes apply to all Members equally in that all Members continue to be eligible for the current Step-Up Tiers, the proposed Step-Up Tier 1, and proposed Non-Displayed Step-Up Tier, have a reasonable opportunity to meet the tiers' criteria and will receive the corresponding additional rebates if such criteria are met. Additionally, the proposed tier changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed tier criteria would incentivize market participants to direct liquidity adding displayed and non-displayed order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall

²³ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges and off exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15%²⁴ of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed

²⁴ Supra note 3.

companies.”²⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁶ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and paragraph (f) of Rule 19b-4²⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f).

suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2023-020 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2023-020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2023-020 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,

Deputy Secretary.

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²⁹ 17 CFR 200.30-3(a)(12).